

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

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) MDL No. 1456

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THIS DOCUMENT RELATES TO  
01-CV-12257-PBS, 01-CV-339 AND  
1:03-CV-11226-PBS

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) Civil Action No. 01-CV-12257 PBS  
)  
) Judge Patti B. Saris  
) Chief Magistrate Judge Marianne B. Bowler

**TRACK 1 DEFENDANTS' MOTION TO PRECLUDE THE EXPERT TESTIMONY OF  
DR. RAYMOND HARTMAN IN CONNECTION WITH CLASSES 1 AND 2 OR, IN THE  
ALTERNATIVE, FOR A *DAUBERT* HEARING**

Pursuant to Federal Rule of Evidence 702, Local Rule 26.4(a) and Case

Management Order ("CMO") 20, the Track 1 Defendants hereby move this Court to preclude the expert testimony of Plaintiffs' expert witness, Dr. Raymond Hartman, in connection with Classes 1 and 2 pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The grounds for this motion are set forth in the Track 1 Defendants' Memorandum In Support Of Their Motion To Preclude The Expert Testimony Of Dr. Raymond Hartman In Connection With Classes 1 and 2 and the Declaration of Steven M. Edwards, dated June 15, 2006.

The Track 1 Defendants are making this motion because plaintiffs have relied on Dr. Hartman in their summary judgment filings in connection with Classes 1 and 2, thereby indicating that they plan to call Dr. Hartman as an expert witness in connection with the Class 1 and 2 trials, the first of which is scheduled to commence September 25, 2006. CMO 20 provides a schedule for filing a *Daubert* motion in connection with Class 3, but the hearing on that motion is not scheduled to take place until after the first Class 1 and 2 trial is complete. Defendants have

attempted to confer with plaintiffs on a schedule for the Class 1 and 2 *Daubert* motion, but plaintiffs have declined to discuss it.

WHEREFORE, for the reasons set forth in the Memorandum and Edwards Declaration described above, the Track 1 Defendants respectfully request that the Court grant the Track 1 Defendants' motion and enter an order:

- a. precluding the expert testimony of Dr. Raymond Hartman with respect to Classes 1 and 2; or, in the alternative,
- b. scheduling a *Daubert* hearing, and
- c. providing such other and further relief as the Court deems just and proper.

### REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d) the undersigned counsel hereby requests oral argument on this motion.

WHEREFORE, BMS respectfully requests that this Court grant it leave to file the foregoing listed documents under seal.

Dated: Boston, Massachusetts  
June 16, 2006

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on June 16, 2006 a true and correct copy of the forgoing document was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Lyndon M. Tretter

Lyndon M. Tretter